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James V. Costigan, Reg. No. 25,669	July 2, 2007	

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Docket No.: 1059-007

JUL 0 2 2007

IN THE UNITED STATES PATENT AND TRADEMARK PATENT OPERATION

In re Application of:

Barry Libin

Serial No.: 09/224,781

Filed: January 4, 1999

For: METHOD OF PREVENTING AND TREATING MUCOSAL AND DERMAL CONDITIONS

New York, NY 10036 July 2, 2007

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

This Reply Brief is being filed in response to the Examiner's Answer that was mailed May 2, 2007.

In response to Rejection No. 1., the applicant wishes to point out that the Examiner is arguing that the term "consisting essentially of" does not include nisin, a material which the prior art identifies as a material which has an effect on the composition. The '711 patent identifies misin as having a biological effect in that it maintains the activity of triclosan. This is all the evidence that is required to establish that the presence of misin has a material effect on claimed composition. To hold otherwise would mean that the elimination of an active component from a composition would not result in a novel composition, when the active component is known to a material effect on the properties composition. In the case of In re Janakirama-Rao, (CCPA 893, 1963) the composition was composition and there was no evidence of the properties of the materials that were alleged to be excluded by the

PAGE 2/3 * RCVD AT 7/2/2007 3:26:44 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-3/21 * DNIS:2738300 * CSID:2123028998 * DURATION (mm-ss):01-30

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language "consisting essentially of." That is not the case in the present appeal.

With regard to Rejection 2, the '099 patent assigned a biological function to urea, which was described as a This evidence is "horny substance softening agent." that is conclusive that there is a material effect In rationale urea. Under the imparted by the applicant's claims must Janakirama-Rao, 19. interpreted as excluding urea. The Examiner has given no reason why it would be obvious to exclude urea. is excluded, the use of the composition is not limited to the foot or the palm and it may be used on mucus This is evidence of the membranes such as the mouth. material effect of urea in this composition.

The Examiner's comments, regarding Rejection 3 are in error because the '711 patent requires that nisin be present and this material is excluded from the claims for the reasons set forth in response to Rejection 1.

for these reasons and the reasons set forth in the Brief it is requested that the rejections of record be reversed.

Hedman & Costigan, PC 1185 Avenue of the Americas New York, NY 10036 (212) 302-8989 Respectfully submitted

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